IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Original Jurisdiction

Dated: Nainital: the 19th day of April, 2004
Crl. Bail Application No. 338 of 2004

Order on the Bail Application:

CRIMINAL SIDE

Vishal Kumar, S/o Shri Nukta Prasad
R/o Opp. Old Cinema Hall,
Near Bus Stand Tanakpur
P.S. Tanakpur,
District Champawat.

…..... Applicant

Versus

State of Uttaranchal …… Opposite Party

Arising out of Case Crime No. 232 of 2003
Under Sections: 18/20 N.D.P.S. Act
Police Station: Tanakpur,
District: Champawat.

Hon'ble P.C. Verma, A.C.J.

Heard Mr. B.S. Khanka, Advocate for the applicant and learned Government Advocate.

The applicant is facing prosecution for the offence punishable under sections 18/20 N.D.P.S. Act in case crime No. 232 of 2003 at Police Station Tanakpur, District Champawat.

The applicant was arrested on 2nd December, 2003. It is written that the applicant was not willing to go to nearest Magistrate and he had full faith in the Station House Officer, therefore, the Station House Officer searched and seized the narcotics substance and arrested the applicant.

Sub-section 1 of Section 50 of the N.D.P.S. Act, 1985 provides that when an officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person

without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

Sub-section 2 of Section 50 of N.D.P.S. Act, 1985 provides that if such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

Sub-section 3 of Section 50 of N.D.P.S. Act, 1985 provides that the Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

Sub-section 5 of Section 50 of N.D.P.S. Act, 1985 as inserted after the amendment made by Act No. 9 of 2001 provides that when an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal procedure, 1973.

The language of sub-sections 1, 2, 3 & 5 of Section 50 of the N.D.P.S. Act, 1985 is very clear that when such person requires to be searched before a Magistrate then he shall be taken to the Magistrate and after permission of the Magistrate, the search could be made meaning thereby that if a person does not required to be searched before the Magistrate, rather he expresses his full faith in the search authorised person, the authorised person may proceed for search. But after the amendment, if a search is to be made by the Officer authorised under section 42 without producing the person to be searched before the Magistrate, he will have to proceed to search the person as provided under Section 100 of the CrPC and after search is conducted, the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours and send a copy

thereof to his immediate official superior as provided under sub-section 6 of Section 50 of the N.D.P.S. Act, 1985.

Here, the reason as provided is that the arrested person did not want to go before the Magistrate and had full faith in the Arresting Officer. Though the reasons are there, but the search and seizure has not been conducted in accordance with the provisions of Section 100 CrPC.

Therefore, in my opinion, it is a fit case in which bail may be granted. Accordingly, I direct that the applicant namely Vishal Kumar be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the C.J.M., Champawat.

(P.C. Verma, A.C.J.)

Dt. 19.04.2004
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